U.S. DEPARTMENT OF COMMERCE
National Technical Information Service

PB-257 807

Guide for Contract Project Officers

Environmental Protection Agency, Washington, D C

Nov 71

272077

PB 257 807

Guide for

CONTRACT PROJECT OFFICERS

ENVIRONMENTAL PROTECTION AGENCY

REPRODUCED BY
NATIONAL TECHNICAL
INFORMATION SERVICE
U. S. DEPARTMENT OF COMMERCE
SPRINGFIELD, VA. 22161

BIBLIOGRAPHIC DATA SHEET	1. Report No.	2.	3. Recipient's Accession No. PB-257 807
4. Title and Subtitle: Guide for Contract Project Officers			5. Report Date: Nov 71 6.
7. Author(s): Thomas E. Carroll, Howard M. Messner, & Edward T. Rhodes			8. Performing Organization Rept. No.
9. Performing Organization Name and Address: Environmental Protection Agency, Washington, D.C.			10. Project/Task/Work Unit No. 11. Contract/Grant No.
12. Sponsoring Organization Name and Address			13. Type of Report & Period Covered 14.

15. Supplementary Notes

16. Abstracts

The guide is presented in order that all EPA employees may be aware of the procedures and policies to be followed in the negotiated contracting process. This manual does not go into all of the voluminous public laws, procurement regulations and local policies pertaining to Government procurement but is intended to be simple guidelines written for the prospective Project Officer.

17. Key Words and Document Analysis. 17a. Descriptors

*Contract administration,
*Government procurement,
*Manuals,
Government policies,
Methodology,
Negotiated contracts,
Projects,
Personnel development,
Executives,
Planning,
Guidelines,
Evaluation,
Contracts,
Management engineering,
Documentation,
Definitions,
Classifications,
Negotiations.

17b. Identifiers/Open-Ended Terms

Environmental Protection Agency,
Project personnel.

17c. COSATI Field Group 5A

18. Availability Statement	19. Security Class (This Report)	21. No. of Pages
National Technical Information Service Springfield, Virginia 22161	UNCLASSIFIED	90p.
	20. Security Class (This Page) UNCLASSIFIED	22. Price 5.00/3.00

FORM NTIS-35 (REV. 10-73) ENDORSED BY ANSI AND UNESCO. THIS FORM MAY BE REPRODUCED USCOMM-DC 8265-P74

Guide for

CONTRACT PROJECT OFFICERS

Thomas E. Carroll
Assistant Administrator for Planning and Management

Howard M. Messner
Deputy Assistant Administrator for Administration

Edward T. Rhodes
Director, Contracts Management Division

November 1971

ENVIRONMENTAL PROTECTION AGENCY

FOREWORD

At one time, the negotiated contracting responsibility with the various organizations which now constitute EPA represented a small responsibility in relation to total budgets and expenditures. In the past five years, these organizations have greatly increased the number of programs which require outside contribution not only in the grants area but also in the negotiated contracting area. More and more profit making organizations are becoming interested in conducting research and development to solve our environmental problems. Therefore, a much more competitive atmosphere exists than did five years ago. In the years ahead, we will be directing more of our funds toward the negotiated contracts mechanism. We should take advantage of this competitive atmosphere but at the same time observe the basic principle of fairness to all prospective contractors as this manual suggests.

It is important that all EPA employees be well aware of the procedures and policies to be followed in the negotiated contracting process. This manual does not go into all of the voluminous public laws, procurement regulations and local policies pertaining to Government procurement. It is intended to be simple guidelines written for you, the prospective Project Officer. As you read this closely, I am sure that you will agree with me that the guidelines given here are based upon a common sense approach that you as a fellow taxpayer will want to follow when

placed in the position of influencing the expenditure of public funds.

I hope that all employees will view these guidelines not as hurdles but as stepping stones in awarding negotiated contracts in a prompt and professional manner to accomplish the EPA mission. An early and open communication between the Project Office and the Contracting Office is an essential element in the negotiated contracting process. I urge all prospective Project Offices to involve their respective Contracting Offices in the early phases of all negotiated contract planning.

Thomas E. Carroll
Assistant Administrator
for Planning and Management

GUIDE

ENVIRONMENTAL PROTECTION AGENCY

GUIDE FOR CONTRACT PROJECT OFFICERS

Page No.

PART I

NEGOTIATED CONTRACTING PROSPECTIVE . . . . . 1 - 6

PART II

PRESOLICITATION PLANNING AND DETERMINATIONS . . . . . 7 - 28

A. Advance Procurement Planning . . . . . 7 - 10

B. Competitive vs. Noncompetitive Procurements . . . 10 - 14

C. The Written Request for Negotiated Contract . . . 14 - 17

D. Obtaining Sources . . . . . 17 - 21

1. Research and Development Sources Sought . . . 19 - 20

2. Individual Synopsis . . . . . 20 - 21

3. Source Files 21

E. Preparation of the Request for Proposal (RFP) . . 22 - 28

1. Scope of Work Preparation . . . . . 23 - 25

2. Technical Proposal Requirement of the RFP . . 25 - 27

3. Business Proposal Requirements of the RFP . . 27 - 28

4. Inclusion of Proposal Evaluation Criteria in RFP 28

Page No.

PART III

SOLICITATION, EVALUATION, NEGOTIATION, AND CONTRACT AWARD . . . 29 - 41

A. Solicitation . . . . . 29 - 32

1. Relations and Communications with Prospective Contractors . . . . . 30 - 31

2. Safeguarding Information Received from Prospective Contractors 31

3. Receipt and Handling of Proposals . . . . . 31 - 32

B. Evaluation . . . . . 32 - 36

1. Technical Evaluation . . . . . 32 - 35

2. Business Evaluation . . . . . 35 - 36

C. Negotiation and Contract Award . . . . . 36 - 41

1. Pre-Negotiation Conference 37

2. Negotiation and Contractor Selection . . . . . 37 - 39

3. Contract Preparation and Coordination . . . . . 39 - 40

4. Contract Award . . . . . 40 - 41

PART IV

CONTRACT MANAGEMENT RESPONSIBILITIES OF THE PROJECT OFFICER . . 42 - 57

A. Evaluation and Control of Progress . . . . . 42 - 46

1. Progress Reporting . . . . . 43 - 45

2. Progress Reviews . . . . . 45 - 46

B. Administration Required by Contract Provisions . . . . 46 - 53

1. Prior Approval Items . . . . . 46 - 50

Page No.

2. Evaluation of Inventions and Data Rights . . . . 50 - 51

3. Handling Cost Overruns . . . . . 51 - 53

C. Contract Modifications . . . . . 53 - 56

1. Types of Contract Modifications . . . . . 53 - 55

2. Modifications Within the Scope of the Contract va. New Procurement . . . . . 55 - 56

D. Contract Completion . . . . . 56 - 57

PART V

SPECIAL CLEARANCES . . . . . 58 - 64

A. Printing . . . . . 58 - 59

B. Questionnaires - Forms 59

C. Contractor Use or Acquisition of Property . . . . . 59 - 60

D. Foreign Research Contracts 60

E. Equipment and Services . . . . . 60 - 61

F. Management Consultants 61

G. Classified Contracts 61

H. Modification of Unauthorized Commitments . . . . . 61 - 62

I. Motion Picture Production Requirements 62

J. Unsolicited Proposals . . . . . 62 - 64

PART VI

EXPLANATION AND DEFINITIONS . . . . . 65 - 86

A. Types of Contract Requirements . . . . . 65 - 67

1. Service Contracts . . . . . 65 - 66

Page No.

2. Data Requirements Contracts 66

3. Material or Hardware Contracts 66

4. Combination Requirements . . . . . 66 - 67

B. Personal Versus Non-Personal Services Contracts . . . . . 67 - 68

C. Types of Contract Cost Arrangements . . . . . 68 - 78

1. Cost-Reimbursement Contracts . . . . . 68 - 74

2. Fixed-Price Contracts . . . . . 74 - 77

3. Fixed-Rate Contracts . . . . . 77 - 78

D. Architect and Engineering Contracts . . . . . 78 - 79

E. Definitions . . . . . 79 - 85

F. Responsibility Chart 86

- PART I -

NEGOTIATED CONTRACTING PROSPECTIVE

There are a number of fundamental tools utilized by EPA to accomplish its mission. The principal mechanisms are the in-house project, the grant, and the contract. Determining the proper blend of these tools is a prime responsibility of program managers. The grant and the contract are the most complicated and involved because in both instances large sums of money are being passed on to organizations (profit and non-profit) outside of the Government who are in one way or another competing against each other for recognition. At this point, the similarity between Grants and Contracts ends.

Let us examine the basic differences between the Grant and Contract situations.

Controls

In theory the contract situation calls for more controls to be placed upon the contractor than would normally be called for under the grant situtation; however, there are varying degrees of controls written into both types of agreements depending upon the situation. The contract generally places more rigid controls on expenditure of funds than does a grant.

Solicitation and Application

Under a contract situation, the initial contact with the prospective contractor(s) is usually made by the Government in the form of a formal solicitation (Invitations for Bid or Request for Proposal). Under a grant situation, the initial action is usually taken by the prospective grantee in the form of an application submitted to the cognizant program or grants management office; however, EPA legislation allows for some programs to solicit grant applications.

Percentage of Reimbursement

The Contractor generally expects to be totally reimbursed (including profit if appropriate) for the material and services provided under a contract. However, most grants contain cost-sharing arrangements which require the grantee to contribute a certain portion of the total amount.

Profit or Non-Profit

Although some of our EPA contracts are written with non-profit organizations, the contract mechanisms are designed for a profit situation. In many instances competition is conducted prior to contract award. Grants are not normally awarded to profit making organizations, nor can formal competition be conducted in grant awards.

Benefits

The type of benefits to be derived from the project may also determine the selection of either the contract or grant mechanism.

Grants are often used as a device to assist in the financing of projects. Contracts are usually awarded to secure services and equipment required by the EPA programs in working on national problems.

Due to variances in EPA grant program legislation, the general criteria distinguishing a grant from a contract situation are subject to exception. If the Project Officer has any doubt as to the type of agreement to be employed, he should contact his Contracting Officer or Grants Management Officer at the inception of the requirement. Additional information regarding Grants is available in the EPA Staff Manuals to be distributed by the EPA Grants Management Division.

After a determination has been made that the project requirement can be best handled by the contract mechanism, an additional determination is needed to decide if the situation calls for an advertised contract (IFB) or a negotiated contract (RFP). Many people consider the word "advertised" to be synonymous with "competition" and the word "negotiation" to be synonymous with "sole source." This is not always the case and often causes much confusion for the Project Officer and eventually the Contracting Officer.

The basic criteria for an advertised contract situation are as follows:

(1) It is possible to define adequately the contract requirements to the extent that qualified bidders can provide fixed price bids on an equal technical basis for like equipment or services.

(2) The Contracting Officer is willing to make a contract award to the lowest responsive bidder without a need for technical evaluation and without Project Office discussion with bidders.

(3) It is reasonable to believe that more than one source can provide a bid on the requirement.

(4) The Government's initial estimate for the requirement is in excess of $2,500 for material or services or in excess of $2,000 for construction. (Procurements of small dollar value are generally not considered to be worth the time and expense involved in a formal advertised procedure and may be negotiated by using a less involved competitive procedure.)

In contrast, the basic criteria for a negotiated contract situation are as follows:

(1) It is not possible to adequately define contract specifications (such as for research and development requirements) to the extent that the Government would

be satisfied by awarding the contract to the lowest offeror based upon price competition alone.

(2) The Contracting Officer determines that another form of evaluation in addition to the cost evaluation is required. In most cases a technical evaluation is necessary to determine those proposals which are the best technically. In some research and development requirements, it may be in the best interest of the Government for the Contracting Officer to select a higher price proposal depending upon the degree of its technical superiority as determined by the project officer.

(3) If after a survey of existing technical sources and their respective capabilities, it is determined by the Contracting Officer that there is only one source (including educational institutions) who can meet the requirements of the proposed contract. (The various criteria for sole source selection will be presented later.)

According to existing laws, regulations, and good business practice the Contracting Officer must first consider the element of competition in a negotiated contracts situation. If the negotiation method is determined to be more appropriate than the advertised method, this is not justification in itself for sole source contracting. In both

advertised and negotiation situations, competition is the first consideration.

The following PARTS II through IV cover the complete negotiated contracting process from the initiation of the requirement by the Project Office through to the contract completion. PART V covers special situations which are often associated with EPA negotiated contracts and PART VI includes some brief explanations, definitions, and a chart of responsibilities which are intended to aid the Project Officer's understanding of the negotiation process as it should be performed in EPA.

It is the intent of this manual to provide prospective contract Project Officers with an understanding of the negotiated contracts mechanism and the procedures involved, and to provide effective communications between Project Officers and all supporting administrative elements, i.e., Contracting Officers, attorneys, and auditors.

PART II

Presolicitation Planning and Determinations

- A. ADVANCE PROCUREMENT PLANNING
- B. COMPETITIVE VS. NONCOMPETITIVE PROCUREMENTS
- C. THE WRITTEN REQUEST FOR NEGOTIATED CONTRACTS
- D. OBTAINING SOURCES
- E. PREPARATION OF THE REQUEST FOR PROPOSAL (RFP)

- PART II -

PRESOLICITATION PLANNING AND DETERMINATIONS

The most important, yet often most overlooked, phase of the negotiated contracting process is the presolicitation phase. The Contracting Officer is the Government's only authorized representative to solicit a formal proposal from a prospective contractor. The Contracting Officer is required by law to make certain significant determinations during the process, most of which have to be made prior to solicitation. Therefore, it is extremely important for the initiating project office to contact the Contracting Officer immediately upon conception of a contract requirement. Many of the problems encountered in the negotiated contracts process today have occurred because an early and open communication was not held between the initiating project office and the Contracting Officer. The initiating project office should attempt to designate a responsible Project Officer as soon as possible during the presolicitation process. The designated Project Officer should become closely associated with the proposed contract program and should serve as the technical contact for discussions with the Contracting Officer throughout the process.

A. ADVANCE PROCUREMENT PLANNING

The effectiveness of the contracting activity is greatest and the interests of the initiating project office are served

Reproduced from best available copy.

best if procurement planning is conducted before the formal written Procurement Request document is initiated by the Project Officer. Indeed, the very nature and complexity of EPA negotiated procurements demand advance planning. Moreover, after the Procurement Request document is received by the contracting activity, the planning must continue until a definitive contract has been placed with the selected source.

The benefits derived from procurement planning are many, and include the following:

(1) Procurement work loads in both the project office and the contracting activity can be scheduled more effectively; peak periods can be forecast and planned for; and individual procurements requiring special handling can be identified and accommodated.

(2) When the availability of qualified sources is not fully known, a systematic search can be undertaken and source capabilities determined with the thoroughness that is required.

(3) When written justifications are necessary to support the contractual method of handling the procurement, they can be prepared with due confidence of approval by higher authority.

(4) Drafting of work statements can begin at the earliest practicable date, thus providing the best possible description of the Government's requirements from both a technical and

a contractual standpoint.

(5) An early determination can be made that internal approvals and clearances are required and action can be initiated early enough so that contract award will not be delayed. (Many of the approvals and clearances will be discussed in PART V.)

(6) The effectiveness of the EPA negotiated procurement process in obtaining acceptable technical products or services at the lowest possible cost is improved.

(7) As an advance planning tool, the contracting office may initiate a competitive solicitation by incorporating in the Request for Proposals a provision indicating that funds are presently not available and that an award under the solicitation is contingent upon the availability of funds. This procedure shall be followed only when the funds which are envisioned to be used are under Congressional review and the appropriation of the funds is imminent.

(8) Legal and regulatory requirements obviously affect the procurement leadtime. One advantage of early contact with the Contracting Officer is that it provides him with the opportunity to anticipate the procurement steps ahead in view of the specific situation, procurement leadtime may be shortened if the contract situation can be well thought out in advance.

Since the basic planning inputs are generated by the technical program organization, advance procurement planning action must originate from that organization. However, it is the Contracting Officer's responsibility, when planning action is initiated, to provide the guidance necessary to make sure that the planning effort actually does produce the desired results.

B. COMPETITIVE VS. NON-COMPETITIVE PROCUREMENTS

The document which the initiating project office submits to formally initiate its technical requirement shall be discussed in detail later; however, in the event sole source procurement is recommended, a separate memorandum shall be attached which justifies and thoroughly documents the sole source recommendation. The final decision as to sole source solicitation rests with the Contracting Officer. This sole source recommendation or "Justification for Non-Competitive Procurement," shall be discussed by the Project Officer and the Contracting Officer during the ADVANCE PROCUREMENT PLANNING period previously described.

Procurement law and sound procurement practices require that competition be obtained whenever possible. There are circumstances, however, where one institution or commercial organization possesses an exclusive or predominate capability by reason of experience, specialized facilities, or technical competence, to perform the work required. In such instances, the program official introducing the requirement to the procurement process may recommend acquisition

from a single source. EPA guidelines on noncompetitive procurement are contained in EPA Order 1900.1.

The following instructions are set forth to provide meaningful guidance to the individuals responsible for initiation of the non-competitive procurement justification document:

(1) The requirement for such justification does not apply to the following:

a. Procurements of $2,500.00 or less;

b. Procurements from or through other Federal agencies;

c. Procurement of utility services where the services are available from only one source.

(2) The justification document shall give clear and complete discussion of the reasons that preclude competition and shall contain as a minimum the following information:

a. Is this requirement a continuation of previous work performed by this contractor? Relate pertinent background data and identify the continuation of any previous work giving reference to the contract number(s).

b. State whether drawings and specifications suitable for competition are available. If drawings and specifications are not available, state why not, and the leadtime and cost required to obtain them.

c. List other contractors considered for this requirement; the degree of consideration given to them; and the particular capabilities they lack to fill this requirement.

d. State why the contractor selected is best able to fill the requirement and meet the required delivery schedule. Consider such factors as the

(1) Particular capabilities. (What capability does the proposed contractor possess that is so unique to the specific effort that it would exclude offering all other sources in the same general field the opportunity to present their capabilities for evaluation competitively?)

(2) Facilities and/or specialized equipment. (What facilities and test equipment does he have which are specialized and vital to the effort and which cannot be provided by other sources?)

(3) Substantial investment. (Does he have a substantial investment of some kind which would have to be duplicated at Government expense by another source entering the field?)

(4) Inadequate technical data and information. (If lack of drawings or specification is a guiding factor, why is the proposed contractor best able to perform under these conditions?)

(5) Continuation of previous effort. (Is the effort a continuation of previous effort performed by the proposed contractor whereby to make an award to

another contractor at this time would require additional funds and time to bring the new contractor up to the present level of expertise of the incumbent?)

(6) Patents, data, and copyrights. (Is competition precluded because of the existence of patent rights, copyrights, or proprietary processes?)

(7) Uniqueness of approach or capability. (What prior experience of a highly specialized nature does the proposed contractor possess which is vital to the proposed effort? Does the contractor have personnel considered predominant experts in the particular field?) The fact that a proposer sends in a proposal containing a unique idea or proprietary data does not in itself constitute a noncompetitive source of supply. It may be possible that there are other potential sources with an equally suitable approach or proprietary ideas which could accomplish the same end results. If a situation of this nature develops the Government representative shall draft a performance scope of work that does not compromise the unique idea or proprietary data of the proposer and which will give other potential sources an opportunity to compete.

(8) Phasing of procurement. (Is the basic rationale of the prior state of the procurement applicable to the follow-on stage? If not (a) is competitive procurement now possible or (b) do other factors exist which justify a noncompetitive situation for the follow-on stage?)

The four items set forth as a, b, c, and d, above, will be included in the justification even if a negative statement must be made (e.g., this requirement is not a continuation of previous work performed by this contractor). The justification need consider only the pertinent sub-items (1) through (8) above. The justification will be documented only by information that is based on facts rather than unsubstantiated conclusions. Documentation in the justification should be sufficient to permit an individual without technical competence in the area to follow the rationale.

C. THE WRITTEN REQUEST FOR NEGOTIATED CONTRACT

The Project Officer formally initiates his negotiated contract requirement to the Contracting Officer in the form of a written procurement request. The following basic information should be included with the Procurement Request (EPA Form No. 1900-8):

(1) Title of Project (include Program Element Identification;

(2) Estimated period of performance (in months). Distinguish between technical effort and time for submittal of final report when appropriate;

(3) Project Officer;

(4) Background. Briefly, what is the status of present knowledge in this field? What is the present need?

Does this project meet that need? What other contracts are in existence or in process of negotiation with other organizations or individuals which are designed to accomplish a related purpose?

(5) Purpose of contract or modification. What is the proposed program designed to do or furnish? What use will be made of the product or service co be procured?

(6) Procurement abstract. Describe briefly for publicity purposes both program background and scope of work. This abstract will be included in all material synopsized in the Commerce Business Daily and may be transmitted internally for information purposes. Abstracts for competitive procurements should contain remarks about desired qualifications of prospective contractors so that unqualified firms will not become involved.

(7) Scope of work. Describe work and services to be performed, including in detail the methods (statistical, clinical, laboratory, epidemiological, etc.) that will be used. Aside from money, what other Government contribution (equipment, property, etc.) will be necessary? Have any arrangements been made for the Government contribution?

(8) Proposed budget with estimated man-hours involved.

(9) What types (monthly, quarterly progress and/or financial) of reports or other certification of satisfactory progress

will be required and how many copies of each are necessary? The project office must specify the quantity of final reports to be delivered by the contractor. If a draft version of the final report is required for Government review, how many days will be needed for this review and return of the corrected draft report to the contractor for preparation of the final version? How long a period will be needed for the contractor to prepare and distribute the final report?

(10) What clearances will be needed (printing, data processing, questionnaire, management consultant, foreign contract, etc.) and what action has been taken to secure these clearances?

(11) List of proposed contractors. If only one source, then the "Justification for Noncompetitive Procurement" described in PART II must be included.

(12) Evaluation criteria for competitive procurement. (Can be attached as separate document to be included in the Request for Proposal.)

This same document may also be used by EPA program offices as a program approval document. The Contracting Officer will not commence action on the procurement until the proposed contract is approved from a technical standpoint by authorized program officials as designated by the respective Assistant

Administrator. In the event that additional inter-Government clearances and approvals are required the Project Officer should thoroughly document the action taken or to be taken. PART V includes additional information on these clearances and approvals which occur frequently.

The Procurement Request document is required for each contract modification involving additional contract effort with additional funds and for each new contract which requires additional funds. Other types of requests for contract modification actions such as no-cost time extensions, administrative changes, etc., may be handled in a less formal manner as prescribed by the Contracting Officer.

D. OBTAINING SOURCES

Depending upon the type of requirement (services, research, film production, testing, equipment, etc.), there are various methods used to obtain prospective sources under a competitive situation. The initiating project office and contracting office should be jointly interested in obtaining qualified sources and in assuring that adequate competition can be conducted.

The Federal Procurement Regulations require, with few exceptions, that a synopsis of proposed procurements estimated to exceed $5,000.00, be published in the Commerce Business Daily.

The synopsis procedure is to be used to the fullest possible extent in order that potential sources may learn of the Government's interest in specific fields, and to obtain full competition in Government prime and subcontracts.

Some of the major exceptions to the synopsis requirements are: classified procurements, inter-agency orders, personal or professional services, education institutions, an order placed under an existing contract, and unusual or emergency requirements.

Success of the EPA Small Business Program depends upon the degree of project office participation. The initiating project office must confer with the contracting office to cooperatively seek and develop information on the technical competence of small business concerns for products and/or services contracts. EPA Small Business Advisors regularly bring to the attention of Contracting Officers and Project Officers, descriptive data, brochures and other information as to small business concerns that are apparently competent to perform the work in fields in which the purchasing activity is interested. In addition, the Small Business Administration can provide pertinent information concerning potential economically or socially deprived suppliers by making available preferential 8 (a) contracts in accordance with the Small Business Acts of 1953. Full consideration shall be given to such information in selecting qualified sources.

There are three basic ways to obtain sources for negotiated contract requirements initiated by the Project Officer.

(1) Research and Development Sources Sought

In research and development, the Project Office is usually involved in a specific technical area where the state-of-the-art is constantly being redefined and the latest technical information may not yet be published. As a result of this constantly changing environment, new research and development sources become available almost every day. Also, older, more established organizations, might suddenly develop capabilities not previously known to the initiating project office.

In research and development programs, the Commerce Business Daily may be used to publish advance notice of the EPA's specific requirements or interest in specific fields. Through this mechanism potential sources are given an opportunity to submit information demonstrating their capabilities in a specific field or for satisfying specific requirements. This mechanism enables EPA project offices to obtain the best possible sources and to eliminate marginal sources who might be wasting their effort and money by submitting proposals in response to routine Request for Proposals. Proposal preparation can be very costly and if the contractor does a sizeable amount of Government work, the costs of preparing proposals are included in overhead costs shared by the Government.

Respondents to Sources Sought Synopsis are evaluated by EPA project personnel on professional qualifications of scientists or other technical personnel, general and special facilities, and experience in previous or current projects in the given area.

The Contracting Officer is responsible for preparing and forwarding the synopsis to the Commerce Business Daily and is also responsible for receiving the information submitted by prospective sources. The initiating project office is responsible for assisting the Contracting Officer in preparing the Sources Sought write-up. As a minimum, the project offices should provide an outline of the major tasks or major programs to be accomplished under the contemplated procurements or group of procurements and the criteria to be used in evaluating source capabilities. The information received by the Contracting Officer in response to the synopsis will be forwarded to the project office for evaluation and ratings. The project office may add other known qualified sources in addition to those responding to the final source list.

(2) Indidivudal Synopsis

In a situation where the R&D Sources Sought Synopsis is not appropriate, an individual synopsis will be released to the Commerce Business Daily at least two weeks before the Request for Proposal is issued. This method is more appropriate for requirements that are more defined than the R&D type of programs or in situations where time is not available to utilize the Sources Sought described above.

Since there is no evaluation of the sources requesting Requests for Proposals, the individual synopsis should be written clearly to show the specific qualifications that the potential sources must have to be considered as acceptable offerors. The Project Officers may recommend known sources to be added to the source list prior to or after the issuance of the individual synopsis.

(3) Source Files

In situations where there are contract requirements of a continuing nature that are within specific technical areas, the Contracting Officer will maintain source files. These lists may be used on a rotation basis. For instance, if there are 100 qualified sources, the Contracting Officer may choose to solicit proposals from 10 sources each time a requirement is generated. If it is appropriate to use the source file method, the Contracting Officer must assure that the files are up-to-date with the latest capable sources. New procurements still require the individual synopsis even though source files are utilized.

The three basic methods described above can be used with variation. In some instances, it may be appropriate for the Contracting Officer to employ a combination of two or all three of the methods to obtain sources for negotiating contracting requirements.

E. PREPARATION OF THE REQUEST FOR PROPOSAL (RFP)

After receipt of the approved Procurement Request document, other required inter-Agency or inter-Government clearances, and selection of the sole source or sources, the Contracting Officer, with assistance from the Project Officer, will prepare and release the Request for Proposal (RFP).

Although the exact format may vary within EPA components, the negotiated contracts RFP should contain the following essential items:

- Transmittal Letter
- Solicitation Instructions
- Special Provisions with Scope of Work
- EPA General Provisions
- Proposal Evaluation Criteria
- Technical Proposal Instructions
- Business and Cost Requirement Instructions
- Bidder Representations and Certifications Statement

This type of RFP package should be used for both multi-source and sole source documents; however, the extent of information requested under a sole source RFP could be limited if the Contracting Officer is convinced that circumstances warrant a less detailed proposal.

The project office is responsible for all technical contents of the RFP including the Scope of Work or Statement of Work, the

instructional material relating to the contents of the technical proposals and the proposal evaluation criteria.

(1) Scope of Work Preparation

The amount of detail to be put into an RFP Scope of Work will be determined by the type of technical requirement. There are obviously many unknowns in a basic or applied research situation; therefore, the RFP Scope of Work will tend to be general and flexible enough to permit the prospective proposers some degree of latitude in structuring a technical approach to solve the problem. On the other hand, the Scope of Work for an advanced development or hardware requirement should be more definitive as would an RFP Scope of Work for testing or survey services which would define the amount and type of tests or surveys. In all situations, the project office should draft a Scope of Work which is clear, and contains no ambiguities. A good Scope of Work is a prerequisite to an effective and efficient contract.

Work statements can vary from simple statements of objectives to complex statements of performance requirements. Regardless of their simplicity or complexity, certain general principles apply to all of them. First, work statements must be neither so narrow as to restrict the Contractor's efforts nor so broad as to permit the Contractor to explore areas having little relationship to the particular work. Secondly, a work statement defines the Contractor's obligation and should therefore be definitive

enough to protect the Government's interests. Finally, a contractor, taking his ultimate direction from the statement alone, should be able to perform the required work. The work statement will affect the procurement beyond directing the contractor's effort and:

a. May affect the number of good sources willing and able to prepare proposals for the work. If it is too broad, firms may choose not to propose, either because of the risks involved or because they are not able to immediately relate the work requirements to their talents. On the other hand, if it is too restrictive, the most capable (and desirable) sources may feel that their creativity will be stifled by Government overdirection.

b. Will affect the type contract that will be written. For example, if the effort to be performed is well-defined a fixed-price contract may be feasible. On the other hand, if the amount of effort required to perform the work is very uncertain at the outset, a cost-plus-fixed-fee (CPFF) contract may be necessary because of the inability to estimate costs accurately enough to set an acceptable fixed-price.

c. Can effect the basis on which the contract may be written. For example, negotiated R&D contracts may be either completion or term contracts. The completion contract requires the

Contractor to complete and deliver a specified end product -- such as experimental hardware or a final report. The term contract requires the Contractor to apply a specified level of effort -- by man-month or cost rate of effort -- for combined or separately designated categories of labor for a specified period of time.

d. Will affect the evaluation of proposals, just as it will affect the proposer's approaches to the work. Proposal evaluations must be based on the work statement -- on what the project office has stated that it desires.

e. Will affect the administration of the contract, since it defines the Scope of Work -- what the Contractor does and what the Government receives. The manner in which scope is defined will govern the amount of direction that the assigned Project Officer can give and what the Contractor will accept during the contract period of performance.

2. Technical Proposal Requirement of the RFP

One of the principle advantages in using the negotiated contracting mechanism to obtain research and development is that it gives the project office the opportunity to perform a technical evaluation of sources before a final decision is made by the Contracting Officer. The project office should take advantage of this opportunity by providing the contracting office with definitive Technical Proposal

Requirements for the RFP.

In negotiating competitive procurements, particularly research and development type, selection of the Contractor can be influenced by the technical ratings of the proposed Contractors as much as by the comparisons of cost estimates. Consequently, technical (or engineering) proposals are solicited in addition to price quotations. Technical proposals are solicited to insure a Contractor's understanding of the requirement and to determine his planned method of approach to the work. Moreover, they are used to evaluate his technical, engineering, and nontechincal qualifications to perform the work of requisite quality or to produce items efficiently in time to meet the Government's needs.

The requirements for technical proposals should be clearly stated in the RFP. It should include details as to the scope and format desired and the kind of information required. These factors will vary, of course, according to the type, complexity, and individual requirements of the specific procurement. No rigid rules can be made about what should and should not be required. Whenever possible, however, the solicitation should provide insight into the technical factors, criteria, and/or problems involved. In other words, they should say what the Contractor should consider, as a minimum, in preparing his technical proposal. These same factors will, of course, be considered by the Government in its evaluation. This will help

to give to prospective Contractors a common understanding of the EPA requirements and proposed method of evaluation; and it permits meaningful comparison of the proposals received.

Failure to adequately describe the scope and format of the technical proposals may create needless delays and extra administrative effort. For example, if the requirement is not presented clearly, a fully qualified Contractor might fail to present a complete picture of his technical qualifications. Or he might not indicate the backgrounds of his engineers or his past experience in a specific area. Valuable time would be lost in obtaining the missing data -- and the Contractor might even be disqualified on the grounds of inadequate technical competency. Either outcome could reduce the effectiveness of the procurement.

3. Business Proposal Requirements of the RFP

Based upon the Scope of Work prepared for the RFP, the Contracting Officer will determine if the proposals to be solicited will be cost-reimbursement or fixed-price. The Contracting Officer will then complete the RFP contents by selecting the appropriate special and general provisions for the intended contract and by including certain required certifications, statements and cost analysis forms for the Contractor to fill out and sign. If the circumstances call for it, the RFP may also require the Contractors to submit additional information regarding business capabilities such as corporate structure,

number of employees, past performance, available facilities, etc. In most situations, particularly for the competitive RFP's, the prospective offerors will be requested to submit separate technical proposals and cost proposals, which will be evaluated separately by the project office and contracting office. The technical evaluation must be conducted without the cost information so that the Contractor's proposed costs will not influence the technical evaluation; however, project offices will be provided specific data necessary to the technical evaluation, i.e., proposed level and type of labor, subcontract, and travel information, etc.

4. Inclusion of Proposal Evaluation Criteria in RFP

In view of the prevailing requirement that Requests for Proposals shall contain sufficient information to enable a prospective offeror to prepare a quotation properly, it is considered sound procurement practice to include the evaluation criteria, both technical and business, in the solicitation. A mathematical formula is not required to be used in the RFP evaluation criteria; but offerors should be informed of at least the major factors to be considered and the relative priority of each of the factors. Whether or not numerical ratings are used, notice should be given as to any minimum standards which will be required of any particular element of the evaluation. Also, reasonably definite information should be given as to the degree of importance to be accorded to the particular factors in relation to each other.

PART III

Solicitation, Evaluation, Negotiation, and Contract Award

- A. SOLICITATION
- B. EVALUATION
- C. NEGOTIATION AND CONTRACT AWARD

- PART III -

SOLICITATION, EVALUATION, NEGOTIATIONS, AND CONTRACT AWARD

The Contracting Officer will release the Request for Proposal (RFP) to the selected source or sources. The RFP will specify the date on which respondents must submit their proposals and should include the essential contents as previously mentioned in PART II. During the Proposal Preparation and Evaluation Period all written or oral communication between the Government and the Contractor should be controlled by the Contracting Officer. In sole source situations, the Contracting Officer may prescribe a less formal method of solicitation, evaluation and negotiations; however, the basic principles should be observed as described below.

A. SOLICITATION

Subject to the Contracting Officer's determination as to the number of sources that constitute adequate competition, all properly qualified sources should be given equal opportunity to participate in Government procurements. Every source solicited for a proposed procurement must be provided the same information. No action may be taken that might give one organization an advantage over the others. This applies to all procurements -- formally advertised or negotiated -- and to both prime contractors

and subcontractors. The Request for Proposal, therefore, advises all offerors that any questions concerning the procurement should be referred only to the Contracting Officer or his representative who is responsible for coordinating technical questions with the initiating project offices.

(1) Relations and Communications with Prospective Contractors

Between the time that the Requests for Proposals are mailed and the contracts awarded, only authorized procurement personnel should have any contact with prospective Contractors. If bidders or pre-proposal conferences are considered necessary to discuss the procurement and transmit technical or other information to the firms solicited, they must be arranged for and managed by the Contracting Officer or his respresentative. All correspondence to prospective Contractors must be signed by the Contracting Officer or authorized representative and he must receive all correspondence from prospective Contractors. In the course of these discussions, if one Contractor is given information that would aid him in preparing his offer or the lack of which would be prejudicial to the uninformed offerors, the same information must be provided to all other organizations solicited. This is done by means of modifications to the RFP which correct, clarify, or change the EPA's requirements and must be sent to all firms solicited.

Program personnel must not disclose to any persons or firms outside the EPA any information relative to a procurement. Even within the Government, disclosure of such information should be on a "need to know" basis only.

(2) Safeguarding Information Received from Prospective Contractors

One of the most important administrative responsibilities of EPA program and procurement personnel during the pre-award period is to maintain the confidential nature of information that prospective Contractors include in their offers. This is a prerequisite to sound business and procurement practices since if one Contractor receives information that gives him an advantage over another, competition is destroyed. Then, too, unless they are assured that these data will not leak out to their competitors, prospective Contractors may be unwilling or hesitant to provide the EPA with information about their operations.

(3) Receipt and Handling of Proposals

It is vital that the receipt, storage, and handling of proposals and quotations be treated with all the safeguards necessary to prevent any prospective Contractor from receiving information that might give him a competitive advantage over others.

Under negotiated procurements the opening of proposals is not public; competing Contractors are not given the opportunity to inspect proposals; and the proposals or quotations are not held to the strict element of "responsiveness" required for bids. For example, a Contractor might propose a variation from that requested in the RFP, but, because of the uniqueness of his approach he might still receive the award.

In negotiated procurements, the handling of late proposals, or of modifications to proposals submitted on time, is more complex than it is in formal advertising and frequently creates problems for procurement and program personnel. Specifically, the EPA reserves the right to "consider" offers or modifications to RFP's that are received after the date specified for receipt, but before award is made, if such action is deemed to be in the Agency's best interest, for example, if the late proposal or modification offers a material advantage to the Agency such as significant technical improvements or favorable cost adjustments.

B. EVALUATION

(1) Technical Evaluation

The contracting office will forward copies of all technical proposals received to the project office with a request for technical evaluation. Generally, contracting personnel are not qualified to evaluate proposals from a

technical viewpoint and must rely on scientific and engineering personnel for this function. Research and development awards should be made to those organizations whose proposals offer the highest competence, consistent with EPA requirements, in the specific field of science or technology involved. Awards need not be made on the basis of proposals offering efforts that exceed those needed for the successful performance of the work. It is imperative, therefore, that technical evaluations and recommendations be fully documented and reviewed by responsible personnel.

The project office or evaluation team shall evaluate the technical aspects of each proposal in accordance with pre-established technical evaluation criteria as discussed in PART II. The evaluation criteria are weighed by the project office according to their importance in the particular procurement. In the event technical clarification of an offeror's proposal is required, the project office shall notify the contract negotiator so that arrangements for obtaining the required information can be made prior to the formalization of the technical evaluation memorandum. Also, the program may wish to consider alternate proposals or proposals which suggest deviations from the Government's Scope of Work statement. Under a Sole Source procurement, such proposals are explored with the offeror during this technical clarification period and the Scope of Work modified to reflect changes agreed upon. However, in a

competitive procurement situation all prospective offerors must be given the opportunity to revise their proposals if a significant change in the Scope of Work is being considered. If necessary, a technical clarification conference will be convened with the prospective offerors by the Contracting Officer.

The project office shall prepare and submit to the Contracting Officer a technical evaluation memorandum containing the results of the evaluation and recommendations as to the proposals deemed technically acceptable.

While there is obviously no standard format for presentation of the technical evaluation, certain factors must be considered to assure that sufficient technical reviews are presented. Even where a mathematical rating system is employed, the Project Officer must support his findings with concrete technical data and narrative which documents the conclusions reached about acceptability or unacceptability of proposals. This information is necessary for entertaining competitive negotiations and the subsequent providing of justification and documentation of the contract award. The technical evaluation memo should contain sufficient documentation to adequately describe the recommendations of the evaluation team and to justify the reasons why any offeror is or is not capable of performing the work. Also, the documentation should include (1) an indication of the probability as to successful

performance of the work; (2) the reasons why an offeror rated low, high, etc.; (3) strong points and/or weaknesses in the proposal; (4) the items which should be discussed with offeror during negotiation; (5) the items which should be clarified with offeror prior to determining whether or not he may be able to successfully perform the work; (6) areas in which the offeror has proposed work in excess of that required by the RFP and conversely areas which were omitted by the offeror but required by the RFP; and (7) in cost-plus-a-fixed-fee or cost-reimbursement type procurements, an indication as to whether the level of effort (man-hours, including type of labor skills) is adequate for performance of the work.

2. Business Evaluation

The Contracting Officer will normally perform a business evaluation of those proposals determined to be technically acceptable and within the competitive range. To assist him in this analysis, the Contracting Officer may obtain advice from finance, pricing, audit and other cognizant Agency specialists having procurement responsibility. Simultaneous coordination of the efforts of these specialists will be obtained to the maximum extent practicable to compress the procurement leadtime. The business evaluation will include a review of the following:

a. Cost Elements

The direct labor costs, material costs, overhead rates,

travel policy, and profit factors are verified to assure fairness and reasonableness.

b. Contractor's Management Capability

In making this apprisal, such factors as the Contractor's management organization, past performance, reputation for reliability, availability of required facilities, cost controls (accounting), purchasing procedures, property control methods, financial stability and nondiscrimination (equal employment opportunity), are considered.

As a result of the technical evaluation and business evaluation, the Contracting Officer can best determine which aspects must be stressed during negotiations with the selected Contractor or Contractors. The Contracting Officer is required to negotiate with all offerors who are determined to be in the competitive range, price and other (technical) factors considered.

C. NEGOTIATION AND CONTRACT AWARD

Under a negotiated procurement, selection of the source or sources (after review of the technical and business aspects of the offers received) marks only the beginning of the task of negotiating a definitive contract. Contract negotiation entails: (1) reaching agreement with a proposed Contractor on the pricing and other provisions that will condition his

performance on the contract; (2) setting forth these terms in a mutually acceptable contractual document; and (3) justifying the contract negotiated.

(1) Pre-Negotiation Conference

Prior to negotiations with the selected offeror or offerors, the assigned Contract Negotiator may conduct a meeting with those members of the Government's negotiation team who will participate in negotiations. The purpose of this meeting is to present the objectives to be sought during negotiations and to establish a unified negotiation position. Pre-negotiation meetings are normally required for the high-dollar or complex contract negotiations.

(2) Negotiation and Contractor Selection

The Contractor Negotiator will make arrangements for negotiations with the offeror or offerors who have been determined to be within the competitive range. The goal of negotiations is to achieve a contract agreement that is most advantageous to the Government, price and other factors considered. Negotiations may be held at the Contractor's site, at the EPA facility, or by telephone, depending upon the complexity and magnitude of the proposed contract along with economic and time considerations and past mutual experience.

The Contract Negotiator, assisted and supported by the assigned Project Officer and other members of the Government's negotiation team, conducts the negotiations. It is his responsibility to insure the integrity of the negotiation process and to see to it that a mutual understanding has been reached before he concludes the negotiation session. In competitive negotiations no information shall be given to any offeror relative to his standing with other offerors as to technical merit and price. No offeror shall be advised of the prices proposed by other offerors.

The Federal Procurement Regulations prescribe that after receipt of proposals, written or oral discussions shall be conducted with all responsible offerors within a "competitive range," price and other factors considered. Herein the determination of the "competitive range" is extremely important and diligence must be pursued. Once the technical evaluation is completed the evaluations for those proposers who are considered technically acceptable are reconciled with their respective business evaluation (cost included) to determine the "competitive range." It is emphasized that in this regard the "competitive range" is established not by a predetermined cutoff point for acceptability but on the actual array of scores achieved with the desire to assure maximum practicable competition.

The following guidelines must be adhered to when negotiating with all proposers within the "competitive range:"

a. Technical superiority of an offeror's proposal cannot be the sole basis for award of a contract under a negotiated procurement and, therefore, the technical organization's desire for a superior product cannot be used to justify the absence of meaningful tecnnical or price negotiations with other ofrerors in a competitive range.

b. After establishing the competitive range, the determination must be made whether a technically superior proposer who submits a higher cost will prevail over another proposer who is technically inferior but at a lower cost. This approach is especially valuable for research and development cost-type contracts where cost is a consideration but there is no requirement to make an award on the basis of lowest cost. However, when a firm fixed-price contract is contemplated and the technical determination has been made that all within the competitive range can perform well-defined requirements, contract award should be made to the offeror submitting the lowest price.

3. Contract Preparation and Coordination

The Contract Negotiator is responsible for the preparation of

the contract document which shall reflect the agreements reached during negotiations, and for the preparation of other supporting documentation as required by regulations. Prior to release to the Contractor, the contract may be coordinated with the Project Officer, Property Administrator, Legal Counsel, Cost Analyst, etc., to assure that the contract document is fully representative of the Government's needs consistent with statutory requirements and in compliance with Agency regulations.

Although preparation of documentation and information for contract review is a responsibility of the Contracting Officer, the assigned Project Officer also has a direct interest in seeing that it is successfully accomplished. It is imperative that technical personnel fully document and justify the procurement determination they are responsible for making (i.e., necessity for purchase, sufficiency or lack of definitive specifications, delivery and/or performance schedule requirements for which they share responsibility with the Contracting Officer -- the need for negotiation, the source(s) selected for solicitation, and the source(s) actually chosen to perform the work.

(4) Contract Award

The contract will be forwarded by the Contracting Officer to the Contractor for acceptance and signature. The signed

contract will be returned to the Contracting Officer who signs the contract on behalf of the Government. The contract becomes effective on the date signed by the Contracting Officer unless specific arrangements have been negotiated to set forth another date.

A copy of the fully executed contract is forwarded to the Contractor, as well as to Government personnel having responsibility under the contract. All contract awards over $25,000.00 are publicized in the Commerce Business Daily. Further, all unsuccessful offerors are advised in writing by the Contracting Officer as to the name of the successful Contractor, the amount of the contract, the extent of competition attained, and other information which is deemed appropriate for the circumstances. The Contracting Officer is responsible for providing any additional information that may be requested by unsuccessful offerors. All requests for debriefings and formal or informal protests of award must be handled by the Contracting Officer to assure a unified Government position. The Contracting Officer may request the assistance of the Project Officer in responding to such requests or protests.

PART IV

Contract Management Responsibilities of the Project Officer

- A. EVALUATION AND CONTROL OF PROGRESS
- B. ADMINISTRATION REQUIRED BY CONTRACT PROVISIONS
- C. CONTRACT MODIFICATIONS
- D. CONTRACT COMPLETION

- PART IV -

CONTRACT MANAGEMENT RESPONSIBILITIES OF THE PROJECT OFFICER

Those negotiated contracts which require technical monitoring by EPA technical or program personnel will include specific contract language that defines the authorities of the designated Project Officer. The EPA contract Project Officer is usually given authority to act within the Scope of Work of the negotiated contract. The Contracting Officer is the only Government representative authorized to make any type of contract changes outside of the Scope of Work. The designated Project Officer should always consult with the Contracting Officer before issuing any direction to the Contractor which may represent a change in contract requirements.

In seeing that his contract program is properly carried out, the Project Officer should assure that the Contractor's progress is monitored and, if necessary, controlled. Secondly, he should assure that problems or situations which require a contract modification are promptly brought to the attention of the Contracting Officer for resolution.

A. EVALUATION AND CONTROL OF PROGRESS

The assigned Project Officer must continually monitor progress under the negotiated contract, even though the Contractor retains

primary responsibility for contract performance. The extent of this evaluation and control will depend on the complexity and relative significance of the contract and the Project Officer's opinion as to the amount of direction required for a particular technical effort. In evaluating the Contractor's performance, the Project Officer should be concerned primarily with progress toward completion of the required work. Although it is the Contracting Officer's responsibility to assess the financial status of the contract, the Project Officer should be aware of costs incurred as they relate to contract progress.

(1) Progress Reporting

Periodic progress reporting can serve as a tool in performance evaluation. Technical reports which the Contractor is required to submit furnish most of the information needed to evaluate the physical status of the work. If cost control is a concern, the Contractor could be required to submit Financial Reports which will outline the various elements of costs expended versus original or revised projected elements of costs. An item which is very effective is a cost/technical completion overview which requires the Contractor to interpret [illegible]nical report in terms of a percentage of technical completion in relation to a percentage of costs expended figure.

a. Technical Progress Reports

Most contracts require the Contractor to furnish periodic technical progress reports to the Project Officer. Since these reports provide Project Officers with most of their information on the progress of the work, they should include all relevant details. (They should not, however, become too burdensome to prepare.) Technical progress reports may be submitted in letter form, and may include the number and names of persons working on the project, the facilities devoted to the work, the number of man-days expended, the direction of the work, the kind of number of experiments being conducted, and the latest scientific data, observations, predictions, and plans for the next reporting period. Contractors should be encouraged to furnish preliminary technical information in these status reports even though it is tentative and not ready for widespread distribution. In addition to keeping EPA personnel informed of progress, the technical progress report gives the contractor an opportunity to periodically evaluate his efforts in terms of the intent and specifications of the contract. A progress report forces both the Contractor and the EPA to periodically evaluate the work performed in relation to all contractual requirements.

b. Financial Status Reports

Financial status reports play an important part in contract

management. This is particularly true in cost-reimbursement contracts because of the possibility of cost overruns. Knowledge of the financial status of the contract is essential to the Contracting Officer in authorizing or withholding payments under the contract. Such reports provide information which is helpful in avoiding or at least anticipating cost overruns. This type of cost information provides both the Project Officer and the Contract Negotiator with a check on the Contractor's expenditures and level of effort (in terms of number of people working on the project, facilities committed to the project and so forth.)

Vouchers submitted for costs expended under cost reimbursement type contracts are often used as a cost evaluation and cost control mechanism. This is the least preferred mechanism and should only be used if it is not reasonable to require Financial Status Reports. The information provided on the Contractor's cost voucher is usually of little value for cost control purposes since it involves actual costs expended and the additional time lapse involved in voucher preparation by the Contractor and processing by the Government does not allow for an up-to-date cost status.

(2) Progress Reviews

The Project Officer may also ascertain or verify contract progress by conducting a personal review either at the EPA

location or at the Contractor's site. Contract requirements could include a Contractor presentation or review to be conducted at various stages of development in the program. Since these types of reviews involve travel and presentation costs for which the Government will pay, periodic telephone reviews with the Contractor's project director may be a more reasonable and feasible substitution for contracts of lower dollar value and complexity. On the other hand, some complex research and development contracts will require both extensive progress reporting and extensive progress reviews. In either event, however, the Project Office should inform the Contracting Officer of any significant problems revealed by such reviews.

B. ADMINISTRATION REQUIRED BY CONTRACT PROVISIONS

The General and Special Provisions attached to a negotiated contract are structured to cover most administrative occurrences under the contract. The following describes the most common occurrences and defines the action to be taken by the Contractor and the corresponding action to be taken by the Project Officer.

(1) Prior Approval Items

In order to control the Contractor's cost expenditures and to insure that the EPA objectives are met, contract provisions require that the Contractor obtain the prior authorization and approval of the EPA Contracting Officer before he takes specified actions or incurs certain costs.

For example, prior approval (or consent in the case of subcontracting) is required for subcontracting under cost reimbursement and certain other type contracts; for reimbursement of anticipated costs to be incurred in excess of cost limitations under cost reimbursement type contracts; and for reimbursement for overtime and premium wage payments. In all cases, the cognizant Contracting Officer is responsible for providing such approvals. However, since the underlying circumstances that call for approval may directly relate to the technical performance of the work, the Project Officer will generally be consulted before approval is formally granted or withheld.

a. Special Elements of Cost

Special provisions can be written into the cost reimbursement contract which require the Contractor to obtain EPA approval before incurring costs for such special elements as travel (foreign or local), consultants, property, data processing equipment or services, etc. These special controls, if determined to be necessary, will require the Project Officer to advise the Contracting Officer as to the need and relationship of the costs proposed to the overall obligations of the contract program. The Contracting Officer will attempt to resolve approvals on these special elements prior to contract award; however, if there are certain unknowns, it may not be possible and prior approval requirements may have to be written into the contract. Great care

should be taken so as not to over-control the Contractor, particularly its subcontractors when it is desirable to allow the Contractor some degree of flexibility.

In the event the Contractor is required to request approval of certain cost elements, the Contractor's request will be directed to the Contracting Officer or his designated representatives. In most all cases the Project Officer will be consulted and asked to comment before the formal approval is given by the Contracting Officer to the Contractor.

b. Subcontracts

Under cost reimbursement contracts, the Contractor must obtain consent for placing (1) all cost reimbursement, time and material, and labor hours subcontracts; (2) fixed-price subcontracts that exceed $25,000 or 5 percent of the contract price; (3) any subcontract for facilities, regardless of value, or for special tooling having a value in excess of $1,000; and (4) any subcontract having experimental, developmental or research work as one of its purposes.

The subcontract consent requirement enables the Government to review proposed subcontracts as to the necessity for subcontracting; the technical capabilities of the prospective subcontractor; the reasonableness of the costs and subcontract terms, the type of subcontract (fixed price, cost reimbursement

and so forth); the scope of the solicitation (competitive or noncompetitive); and the work statement, including applicable specifications, to be included in the subcontract. With regard to the subcontracts for facilities, the requirement for consent does not permit any facilities acquisition to be charged to the Government unless it has been otherwise specifically authorized. Subcontract review and consent provisions are not normally included in firm-fixed-price (FFP) contracts. In appropriate cases where an FFP contract is used, the prime Contractor may be required to perform the research without subcontracting.

c. Overtime and Premium Wages

Contracts are to be performed as far as practicable, without the use of overtime, extra pay shifts, or multishifts, and, in particular, without the use of overtime as a regular employment practice.

If permission to use overtime and shift premium work is requested in the contractor's proposal, or during contract performance, the Project Officer will be asked to validate or justify the need in terms of such factors as (1) the specific work and personnel affected; (2) the estimated amount of premium time required; (3) the estimated period of contract performance during which the use of premium time is required; and (4) whether the use of overtime is necessary to

meet essential program schedules or objectives. If the use of premium time is authorized by the EPA the Project Officer will be periodically consulted by the Contracting Officer to determine whether the continued use of premium time is justified.

(2) Evaluation of Inventions and Data Rights

Under research and development negotiated contracts, inventions are required to be reported to EPA by the Contractor. In addition questions may arise pertaining to rights in data by the Contractor and by the Government. The Project Officer will be consulted on both the invention and rights in data type determinations which may develop during the contract period of performance.

In the event the Contractor reports an invention under the EPA contract, it will be reported directly to the Contracting Officer. The invention report will contain all information required by the "Patent Rights" provisions of the negotiated contract. Final determination of Rights to Inventions shall be made by the Administrator after seeking advice from EPA General Counsel. The Project Officer will normally be contacted by either the Contracting Officer or the Administrator's Office to make comments pertaining to the technical contents of the Contractor's report.

At the present time EPA contracting activities continue to use

the patent clauses they used under their previous organizations, e.g., prior HEW components continue to use the HEW clause while Water Quality Offices use the Interior clause.

The HEW and Interior patent policies vary in that under the Interior blanket policy the Government recei es title to subject inventions made under each contract and a license to background inventions thereunder; whereas, under the HEW policy the decision of whether the Government takes title is deferred until after the invention is reported and the decision on licensing the background patent is made on a case by case basis. A standardized EPA patent policy is presently being formulated by our General Counsel which will be published in the Federal Register and therefore be subjected to industry comment. When the policy is finalized, all EPA contracts will contain the same patent provisions.

(3) Handling Cost Overruns

A cost overrun occurs when a Contractor exceeds the estimated costs or the fund limitation of a cost-reimbursement contract. Cost overruns are applicable only on cost reimbursement type contracts because the Contractor is legally responsible for any costs exceeding the total or ceiling prices of fixed price contracts.

Under cost reimbursement type contracts, a Contractor may not be reimbursed for costs incurred in excess of the total estimated costs set forth in his contract schedule. Accordingly, if the Contractor has incurred costs up to the contractual cost limitation,

he is not obliged to continue performance unless the cost limitation is increased by written notification from the Contracting Officer. To avoid delay of work on the procurement while additional funds are being obtained, the standard "Limitation of Cost" clause contained in all cost reimbursement R&D contracts obligates the Contractor to notify the Contracting Officer when the costs he expects to incur in the next 30 days will increase his total incurred costs above 85 percent of the total estimated cost of the contract. The Contractor must also give notice whenever he believes the total cost will be substantially higher or lower than the estimated costs for performing the contract.

The cognizant Project Officer should not depend solely on the above notification requirements to maintain surveillance over cost expenditures as they relate to the technical progress of the work. All too frequently, such notices are not timely enough to permit the Project Officer to initiate appropriate remedial action. Therefore, it is important for him to thoroughly scrutinize every report which the Contractor submits for any indication of an impending overrun. Moreover, he should use his visits to the Contractor's facility as opportunities to detect technical problems, excessive assignment of manpower to the contract, or any other indication of potential cost overrun. Any such situations should be brought immediately

to the attention of the Contracting Officer.

When faced with an overrun, the Project Officer must take appropriate action in consultation with the Contracting Officer. Depending on the circumstances, he may recommend and initiate any one of three courses of action:

a. Terminate the contract for convenience of the Government before the overrun occurs.

b. Modify the contract so as to decrease the technical effort in order to eliminate the need for additional funding.

c. Increase the contract funding to permit completion of the work. If he determines that the work should be completed and if additional funds are avilable, the Project Officer prepares supporting documentation as required by local instructions and forward it through channels to the negotiated contracts office.

C. CONTRACT MODIFICATIONS

(1) Types of Contract Modifications

During the administration of EPA contracts, different types of modifications may be necessary to incorporate new requirements into the contract or to provide contractual coverage for situations that develop after contract award.

Some of these modifications are made in accordance with provisions originally set forth in the contract; others are not anticipated by the original contract terms. All contract modifications must be made in writing by the Contracting Officer. The policy insures that any revisions to contract terms are reduced to written agreements between the Government and the Contractor. An understanding of the types of modifications that may be made to contracts and the correct method for making them can do much to alleviate the problem of informal commitments.

a. Modifications made Pursuant to Contract Clauses

A number of contract terms and provisions provide for modification to a contract if certain conditions arise or if information not known at the time of award becomes available. The standard change clause contained in Government contracts provides that the Contracting Officer may unilaterally direct the Contractor to make certain changes in the work to be followed by such equitable adjustments in the price and delivery schedule as the changes make necessary. These changes must be within the general scope of work and cannot include effort which in the Contracting Officer's judgment constitutes new procurement. The Government Furnished Property clause contains provisions for an equitable adjustment in the contract price and/or delivery schedule in the event the property furnished to the Contractor is not suitable for the intended use.

b. Other types of Modifications

In addition to modifications made pursuant to the terms and provisions of a contract, other modifications, not expressly anticipated by the contract may be necessary. In the proper circumstances, for example, a contract may be amended to increase the quantity of services to be furnished in exchange for an equitable increase in the contract price. Or even if it is not expressly stated in a contract clause, a modification may provide that the Government will, in exchange for equitable consideration, furnish certain property that the Contractor was originally supposed to supply or acquire himself. The authority to make these modifications is restricted to situations in which the Government receives additional and adequate consideration in exchange for the agreement. Thus, in the first example cited, the Government pays a higher price but receives new supplies; in the second, it releases the Contractor from his obligation to supply certain components or other property and receives in exchange an appropriate reduction in the contract price.

(2) Modifications Within the Scope of the Contract vs. New Procurement

In discussing contract modifications, it is necessary to distinguish new procurement from other contractual actions such as changes, since new procurement must be treated just as is a new requirement. For example, the procurement of additional

services is new procurement, whether or not there is an existing contract for the same service. Similarly, a change in the essential character of service under an existing contract or additional work outside the overall scope of an existing contract is also new procurement. The question of whether new specification requirements essentially change the character of existing supplies or services may be a difficult one to answer. While the consideration is basically a legal one, all Project Officers should be aware of the distinction between "new procurement" and "changes" to prevent misunderstanding as to the mechanisms involved in implementing each.

If a new procurement is involved, and EPA decided to contract with a Contractor who is already providing similar services under an existing contract, the new requirement may either be incorporated in an entirely new contract or effected as an amendment to the existing one. The action taken will depend on other circumstances, such as time remaining on the existing contract, severability of the new work and so forth. All rules governing new procurement will apply including the solicitation, evaluation and negotiation process.

D. CONTRACT COMPLETION

Upon completion of the contract work, the objective is to close out the contract as rapidly and as efficiently as possible and to make prompt final payment to the Contractor. To this end,

Project Officers should inspect (or have inspected to their satisfaction) all work promptly after delivery, to the extent necessary to determine its acceptability. If possible, any required acceptance tests of hardware should not be delayed unless this delay is provided for by the contract. While there is an unavoidable delay between the time a Contractor completes his work and receives final payment, any lessening of the delay that can be affected without jeopardizing the Government's interest will obviously result in better relations with the Contractor.

When the Project Officer determines that the work is complete and conforms with the technical requirements of the contract, and all items contractually required have been submitted and are determined to be acceptable, he notifies the Contracting Officer and other concerned offices, in writing. Matters primarily the concern of the Contracting Officer such as the return of documents and disposition of Government furnished or residual property, should not delay the notification; these matters can be mentioned in the notification of completion. In so reporting, under an R&D contract situation the Project Officer should take into account such related requirements as reproducing and publishing the final report.

PART V

Special Clearances

- A. PRINTING
- B. QUESTIONNAIRES - FORMS
- C. CONTRACTOR USE OR ACQUISITION OF PROPERTY
- D. FOREIGN RESEARCH CONTRACTS
- E. EQUIPMENT AND SERVICES
- F. MANAGEMENT CONSULTANTS
- G. CLASSIFIED CONTRACTS
- H. RATIFICATION OF UNAUTHORIZED COMMITMENTS
- I. MOTION PICTURE PRODUCTION REQUIREMENTS
- J. UNSOLICITED PROPOSALS

- PART V -

SPECIAL CLEARANCES

The purpose of this PART V is to provide the Project Officer with procedural guidelines for situations frequently occurring prior to the negotiated contracting process which may require specific clearance or approval action by higher authorities within and outside EPA. The following are pre-award clearances or approvals which must be obtained from other agencies and activities within EPA or if necessary, from other Government departments:

A. PRINTING

The inclusion of full scale printing within contracts is prohibited unless it is authorized by the Joint Committee on Printing of the U.S. Congress. These restrictions on printing apply to contracts which meet the following criteria:

(1) Reproduction of more than 225 copies of a single document by any method.

(2) Reproduction in any quantity by any method utilizing, as part of its process, reusable negatives and/or positives prepared with a camera requiring a dark room.

(3) Composition in preparation for printing by conventional typesetting or by any method used as a substitute for

typesetting, other than preparation of paper masters or stencils for the reproduction of 225 copies or less.

(4) Binding by any method other than simple stapling or loose leaf attachment.

B. Questionnaires - Forms

As a result of P.L. 90-620 no Federal agency shall conduct or sponsor the collections of information upon identical items, from ten or more public respondents without the prior approval and clearance of the Office of Management and Budget. If it is known that a survey will be required under a proposed contract, the initiating project office must initiate clearance action either before or at the same time the Procurement Request document is forwarded to the Contracting Officer. If an unanticipated survey develops during the contract period of performance, the contractor is prohibited from beginning the survey without OMB approval. All such clearance records must be routed from the initiating office to the EPA Management and Organization Division.

C. Contractor Use or Acquisition of Property

Equipment and/or facilities required for contract performance should normally be provided by the contractor; however, the providing of equipment and/or facilities by the Government and/or contractor acquisition at Government expense may require approval at a level above the Contracting Officer. Detailed information to support the

furnishing of Government property must be provided to the Contracting Officer by the initiating Project Office before contract negotiations. The contract cannot be awarded until the Contracting Officer obtains the required Government property approval. Contract installations of non-severable facilities on private property and at Government expense require approval at levels higher than the Contracting Officer.

D. Foreign Research Contracts

All proposed research contracts which involve research projects to be conducted in a foreign country by a foreign contractor must have clearance from the Department of State with respect to consistency with our foreign policy objectives. This clearance should be requested by the initiating Project Office prior to negotiations. All such requests to the Department of State will be processed by the EPA Office of International Affairs.

E. Equipment and Services

Major data processing system and equipment procurements must be coordinated with, and in some cases, processed by the General Services Administration. Under negotiated R&D contracts data processing equipment and services which are ancillary to the contract end items may require approval at higher levels of EPA management depending upon the magnitude of the project. Authority to purchase ADPE equipment systems or services should

be obtained from authorized representatives of the EPA Data System Branch in any event.

F. Management Consultants

EPA Order 1900 prescribes that prior to initiating action to contract for management consultant services, all program, staff, regional, and field offices must obtain approval from the Assistant Administrator for Planning and Management. The requiring office must prepare ". . . a memorandum setting forth a statement of the management problem requiring examination, indicating its nature and dimensions, and, if possible, the type, extent, and source of assistance needed in the solution of the problems." The memorandum must be transmitted to the Assistant Administrator through the Director, Management and Organization Division, Office of Administration. This Division will determine whether the requirement can be met by EPA or other Federal sources and submit recommendations to the Assistant Administrator.

G. Classified Contracts

Proposed contracts involving classified information should be coordinated with the designated Agency Security Representative to assure compliance with prescribed security regulations.

H. Ratification of Unauthorized Commitments

EPA project personnel do not have contracting authority and can not legally commit the Government to expenditure of funds. The

Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom procurement authority has not been delegated. The individual who made the unauthorized commitment shall furnish the Contracting Officer detailed documentation concerning the situation. Authority to raftify unauthorized commitments may be retained at higher management levels due to the serious nature of the actions.

I. Motion Picture Production Requirements

Procurement and production of all EPA motion pictures require the written approval of the Director, Office of Public Affairs, or his designee, even if the film is part of a scientific or technical program. The primary responsibility for obtaining approval rests with the initiating program office. However, the Contracting Officer must verify that approval has been obtained prior to soliciting offers from prospective contractors. A copy of the approval document or request for approval should be attached by the originator to the Procurement Request/Requisition when it is submitted to the Contract Operations Office for any procurement involving motion pictures.

J. Unsolicited Proposals

The unsolicited proposal is generally defined as a written offer based on a new or novel design concept or idea relating to a proposed project without prior informal or formal solicitation from a procuring agency. An unsolicited proposal is usually the product of original

thinking by the contractor presenting it and the Government is responsible for refraining from making known to third parties any proprietary information the proposal may contain, thereby encouraging prospective contractors to disclose to this Agency ideas they originate, conceive or develop, in the future. As set forth in PART II, Paragraph B, requirements initiated as the result of a true unsolicited proposal will be negotiated on a sole source basis. Any other practice would discourage proposers from disclosing to the Agency ideas of substantial value; furthermore, making proposals of this type a basis for competitive solicitation might have serious legal as well as moral implications.

In order to insure that a proposal being dealt with is truly unsolicited, the Project Officer must be fully aware of the conditions under which the proposal was developed. Upon receipt of the unsolicited proposal, the Project Officer must evaluate the proposal to assure that it is truly solicited and that there is sufficient documentation to generate a new requirement. If further clarifying information is needed for evaluation purposes, the Project Officer must coordinate his request with the contracting office. The exercise of these restraints and controls will insure that the integrity of the competitive posture for procurements within this Agency will be maintained.

The EPA Grants Management Division has been designated as the focal point for all unsolicited proposals submitted to the Agency. Any EPA office receiving an unsolicited proposal directly from a Contractor should immediately notify the Grants Management Division which will provide the proper procedure to be observed for processing the proposal.

PART VI

Explanation and Definitions

- A. TYPES OF CONTRACT REQUIREMENTS
- B. PERSONAL VERSUS NONPERSONAL SERVICES CONTRACTS
- C. TYPES OF CONTRACT COST ARRANGEMENTS
- D. ARCHITECT AND ENGINEERING CONTRACTS
- E. DEFINITIONS
- F. RESPONSIBILITY CHART

- PART VI -

EXPLANATIONS AND DEFINITIONS

The following explanations and definitions are provided to give the prospective Project Officer a better understanding of negotiated contracts and associated terminology. Also included is a chart outlining functional responsibilities of the Project Officer, Contracting Officer, and other EPA activities involved in the procurement process.

A. TYPES OF CONTRACT REQUIREMENTS

Most negotiated contract requirements are for one of four general areas; services, data, material or hardware, and a combination of services, data or hardware. As previously mentioned in PART II, the type of contract work statement (or requirement) should be recognized in order for the Contracting Officer to determine the type of negotiated contract to be written. To aid the prospective Project Officer in understanding the differences, the following explanations are given:

(1) Service Contracts

This terminology is used to describe contract requirements for certain types of professional, skilled, and unskilled services to be performed over a definite time period. There is usually no deliverable end items required under the contract.

The contracts are for janitorial, maintenance, clerical, cafeteria, training or similar type services.

(2) Data Requirements Contracts

Type of contracts which call for some type of data to be delivered as an end item. This could be for research with a research report as the end item, which is normally the case on research contracts. Other type of contract requirements which fall into this category are: film production and reproduction, preparation of training manuals, or editing and publication of authorized reference material.

(3) Material or Hardware Contracts

This includes a variety of requirements from the standard catalog hardware items (normally purchased by formal advertising) to specialized equipment being developed for research and development purposes (normally handled by negotiations).

(4) Combination Requirements

It is quite possible, particularly for research and development procurement, for contracts to require services, data, and hardware. It is important for the Project Officer to recognize that he has combination requirements, so that in drafting the work statement the required services, data, and hardware can be well defined and separated for pricing and delivery purposes.

For example, a contract for an advanced test chamber would require the contractor to provide sketches, drawings, parts list, maintenance manual and perhaps conduct a one-week training program in addition to delivery and installation of the finished product.

B. PERSONAL VERSUS NON-PERSONAL SERVICES CONTRACTS

Services should not be obtained by contract in such a manner that the contractor or his employees are in effect employees of the Government. The Contracting Officer is responsible for assuring the implementation of this policy by considering specified criteria before entering into any service contract. Generally speaking, contracts which in their substantive effect result in the creation of what is tantamount to an employer-employee relationship between the contractor personnel and the Government are proscribed as violation of the personnel laws. In enforcing this policy the Contracting Officer is required to make a written determination on all contracts involving services. The Contracting Officer's determination will, to a great extent be based upon the background and scope of work provided by the Project Office.

These contract requirements are determined to consist of proposed employer-employee relationships or meet the other criteria of EPA Procurement Regulation 15-55.2 and EPA Order 1900.2 are classified as proposed Personal Service contracts.

The Civil Service Commission has ruled that, except as authorized by express statutory authority, personal services are to be obtained by appointment.

Although normally defined as personal services, service contract requirements for such services as medical, consultant, or management consultant services are expressly authorized by statute; however, these type of requirements should be thoroughly discussed between the initiating Project Office, the Contracting Office, and, if necessary, the cognizant EPA Personnel Office.

C. TYPES OF CONTRACT COST ARRANGEMENTS

The type of contract cost arrangement negotiated by the Contracting Office must be compatible with the technical requirements of the work; therefore, in determining the type of contract, the Contracting Officer will rely heavily upon information provided by the initiating Project Office. Generally, the two basic types of contract cost arrangements are the cost-reimbursement and fixed-price type contracts. The following is a discussion of these two basic types of contracts and the variations used, and a third type, the Fixed-Rate contract, which is a combination of the two basic types.

(1) Cost-Reimbursement Contracts

a. There are four basic kinds of cost reimbursement contracts which would normally be used in EPA; the cost-plus-fixed-fee

contract, the cost contract, the cost-sharing contract, and the cost-plus-incentive-fee or award fee contract.

Under each the Government is obligated to reimburse the Contractor for his actual allowable and property allocable costs, except that the cost-sharing contract provides for reimbursement of only a stated proportion of the contractor's allowable costs. Moreover, under a cost-reimbursement contract, the Contractor is reimbursed for his actual allowable costs whether or not he performs satisfactorily.

To help the EPA control work and costs, each cost-reimbursement contract contains appropriate provisions defining allowable costs. Many cost areas, however, may require special consideration in negotiation to arrive at an advance understanding of their allowability. Cost-reimbursement research and development contracts also require the contractor to notify the Contracting Officer 30 days before 85 percent of the estimated total costs will have been spent, or at any time the Contractor comes to believe that total costs will substantially differ from those estimated. This allows contracting and technical personnel to appraise the Contractor's performance and to decide whether it is wise to give him more funds to complete the project.

The major disadvantage of cost-reimbursement contracts

is that they increase the administrative burden on the EPA and the contractor. The contractor must use an accounting system which is acceptable to the cognizant Contracting Officer and which facilitiates audit of his costs. Normally, all equipment and supplies acquired under a cost-reimbursement contract are Government property and as such must be administered under procedures that are acceptable to the Government. Insurance, overtime, travel, and other administrative areas also are of more direct concern to the Government in connection with cost-reimbursement contracting than they are in fixed-price contracting. These factors plus the need for audit prior to contract close-out result in additional administrative efforts both for EPA and the Contractor.

b. Cost-Plus-Fixed-Fee. The CPFF contract is most widely used for research and for preliminary exploration and study work. It may also be used for development and testing requirements. The CPFF contract pays the contractor his actual and allowable expenditures, within the cost limiation as it may be amended from time to time, plus a fixed-fee. The Government assumes most of the cost risk, while the contractor is assured of a specific amount of fee. The CPFF contract can take one of two forms; completion or terms. The completion form normally requires the contractor to complete and deliver a specified end-product (in certain instances, a final report of research accomplishing the goal or target). If the contractor cannot complete the work within the initially

estimated cost and if the Government elects to provide more funds for completion, these additional funds are provided without increase in fee. However, if the work required by the contract schedule is changed during performance, either by change order or mutual agreement, an equitable fee adjustment is made, to take account of the increase or decrease in the work effort. Also, if the contract is allowed to expire when total estimated costs are reached without completion of all the required work, a downward fee adjustment is required to reflect the decrease in the scope of work.

When the term form of cost-reimbursement contract is used, the contractor is obligated to devote a specified level of effort for a stated period of time. The Fixed-Fee is payable upon certification by the contractor that he has exerted the specified level of effort and provided that the Government is satisfied that this is true. Renewals for additional periods with increases in effort require increases in contract fee and they are, in effect, new procurements. Also, if the level of effort of a term contract is changed during contract performance, an appropriate equitable increase or decrease in fee and estimated costs should be made.

c. Cost. The cost contract is a cost-reimbursement contract without fee. This type of contract is used principally in contracting with educational or other non-profit institutions for research and

development work. Generally, the cost research and development contract contains similar terms as a CPFF contract, except for standard modification of language to remove and exclude references to fee and, in the case of educational institutions, different principles for determining allowability of costs. Moreover, these nonprofit contracts contain simplified and shorter versions of certain contract clauses, such as the Inspection Clause and Government Property Clause.

d. Cost Sharing. The cost sharing contract provides for partial reimbursement of costs in accordance with a predetermined arrangement. It may be used for jointly sponsored research or development with educational institutions and in other cases where the profit making contractor stands to benefit substantially from performing the work (when, for example the results of the contract have commercial use).

Research and Development cost sharing contracts may take various forms. For example, the contractor may agree to a lower overhead rate than his actual costs would permit. Or he may agree to prorate all allowable costs, charging a stated percentage to the Government and absorbing the balance himself. Whatever the method of cost sharing, the basis and mechanics of reimbursement should be clearly set forth in the contract.

e. Cost-Plus-Incentive-Fee. The CPIF contract, like the CPFF contract, provides for reimbursement of the contractor's allowable costs. But the incentive fee contract establishes a fee formula that rewards the contractor for cost underrun and penalizes him for cost overruns of the target cost. A target cost, a target fee, a minimum and maximum fee, and a fee adjustment formula are set forth in the contract. The target cost is the best estimate of the cost of completing the work. If the contractor's actual costs are less than the target cost, he receives a fee larger than the target fee; if his costs are greater than the target cost, his target fee is adjusted downward.

The CPIF contract may have performance incentives in addition to the incentive for reduction in cost. A performance incentive gives the contractor an additional fee for surpassing acceptable performance requirements. The maximum fee for the selected areas of performance may be based on the maximum performance that is attainable within the confines of the contractor's technical proposal. Performance incentives may include incentives for bettering delivery schedules, as well as those tied to the technical performance of the equipment being developed.

f. Cost-Plus-Award-Fee. The CPAF contract is a form of an incentive type contract. The fee negotiated under this type of contract

consists of a base fee to which the contractor shall be entitled and an award fee, entitlement to which in whole or in part, shall be determined by the Government in accordance with evaluation criteria set forth in the contract. The basic difference between a CPIF and CPAF form of contract is that under the CPAF situation the major portion of the contractor's fee is unilaterally determined by the Government based on the contractor's performance.

The CPAF form of contract can be adopted for an R&D situation where the contract scope of work can not be defined specifically enough to completely predetermine the fee incentive provisions. The CPAF contract requires periodic evaluation of the contractor's performance and a fee determination by an objective Government official based upon recommendations of a Government Award Fee Evaluation Board.

Although the CPAF type of contract can be an excellent mechanism under certain situations, its use should be carefully considered in the view of the additional administrative time and costs associated with the fee evaluation and determination

(2) Fixed-Price Contracts

a. There are five basic kinds of fixed-price contracts which would normally be used in EPA. The most used and most

desirable of all types and variations is the firm-fixed-price contract. Other kinds are the fixed-price level-of-effort, the fixed-price redeterminable, the fixed-price incentives, and the fixed-price contract with escalation.

b. Firm-Fixed-Price

A firm-fixed-price (FFP) contract commits the Government to pay specified item prices or a total price at specified intervals or upon completion of the contract and based upon Government acceptance of the items and/or end items called for. It gives the contractor maximum incentives to reduce his costs and thus maximize his profits. It places all risks incurred in performance on the contractor, thus reducing the Government's administrative task. However, because of the indefinite nature of most research and development procurements, the difficulty of predicting accurate costs makes the use of such a contract dangerous to the contractor in the event of unexpectedly high costs, and risky for the Government should costs prove exceptionally low. On the other hand, if the R&D program is at a relatively low cost, the Contracting Officer may determine that a fixed-price contract is most appropriate due to the additional administrative costs involved under a cost-reimbursement agreement.

c. Level of Effort Type

The level-of-effort type of FFP contract could be selected for certain study and development work. The minimum level of effort

and its time period has to be specifically set forth in the contract. Any change in the level of effort constitutes a change requiring a contract modification. This type of contracting has the advantage of relieving the Government, and the contractor, of administrative responsibilities regarding Government audit of costs, insurance provisions, and of providing increasing motivation to the contractor. However, there must be clear and complete advance agreement as to the minimum level of effort required. Otherwise, questions and disputes may arise during contract performance. And, too, where the fixed-price level of effort arrangement is used, cost of any special test equipment, and other costs apart from salaries must be susceptible to reasonable advance estimates.

d. Fixed-Price Contracts with Redetermination

A fixed price contract with provisions for price redetermination permits negotiation of a firm fixed-price based on cost experience gained under the contract. Two kinds of fixed-price redeterminable contracts are authorized; (a) the retroactive price-redetermination-after-completion contract (applicable to certain R&D work) and (b) the contract that provides for prospective price redetermination at a stated time or times during performance. The latter type is designed for quantity production and service contracts that have a lengthy period of

performance, and not for research and development.

Although it is a more flexible arrangement than an FFP contract, a redeterminable contract lacks the flexibility of a cost-reimbursement contract since its ceiling price cannot be exceeded unless the scope of work is increased by Supplemental Agreement. Accordingly, redeterminable contracts should be used in preference to cost-reimbursement contracts only if the nature of the work is tangible enough to warrant a fixed-price ceiling.

e. Fixed-Price-Incentive Contract.

This type of contract, which provides for price increases based on currently established labor rates and/or basic material costs or on current list prices of standard commodities, is not designed for research and development work.

(3) Fixed-Rate Contracts

The fixed-rate contract can be used for services or items for which a fixed-price or fixed-rate can be established for the labor or for the required items but for which the quantity of labor or items cannot be determined at the time of contract negotiation. This type of contract is not usually used for research and development requirements. Predetermined rates or prices are negotiated in the form of a basic agreement between the Government and the contractor,

and the Government will request the services or items in the form of a call or order against this basic agreement.

For instance, the EPA requirements may be for specific types of clinical tests or analysis with the quantity being the unknown factor. If available past cost data can provide a basis for establishing a realistic price for each of the clinical tests, the negotiated contract will include fixed-prices for each. The Contracting Officer or his designated representative can then place orders for the tests as the need arises and at the negotiated fixed-rates. The most commonly used fixed-rate type of contract is the Time-and-Materials contract. Under a Time-and-Materials contract, the contractor promises to perform services on the basis of (a) direct labor hours at specified hourly rates, including direct labor, overhead, and profit; and (b) materials at cost. The latter may include a mutually acceptable handling charge to cover the contractor's overhead expense in regard to the material.

D. ARCHITECT AND ENGINEERING CONTRACTS

Proposed contracts for architect and engineering (A&E) services are processed in a manner exceptional to the standard negotiation process described in PARTS II and III. The initiating project office should coordinate all A&E requirements with the designated Agency A&E representative. Negotiation of A&E contracts are conducted with

selected sources without the benefits of cost competition. The sources are selected by the EPA A&E Source Selection Board. The Contracting Officer cannot negotiate contracts for A&E services for a price (or fee) in excess of 6% of the total estimated for the construction project.

E. DEFINITIONS

Advertising - The method of awarding contracts through the public opening of bids and award to the lowest responsive bidder based on detailed design or performance specifications.

Agreement, Supplemental - A modification to an existing contract which is accomplished by the mutual action of the parties. The term is synonymous with contract amendment.

Annual Appropriation - An appropriation which is available for incurring obligations only during one fiscal year specified in the appropriation act. (This would be in contrast to "no-year funds" which is common in many of EPA's research programs and can be fully obligated in the next fiscal year.)

Bid - (1) An offer submitted in response to a formally advertised invitation for bids, to buy from or furnish supplies or services to the Government under certain prescribed conditions at a stated or determined price.

(2) The act of submitting a bid.

Budget - (1) A planned program for a fiscal period in terms of (a) estimated costs, obligations and expenditure, (b) source of funds for financing, including reimbursement anticipated and other resources to be applied, and (c) explanatory and workload data the project program and activities.

(2) To prepare such a program.

Business Evaluation - A measuring of a business proposal against the expressed requirements of the solicitation and rating of the proposal accordingly.

Commerce Business Daily - A daily list of U.S. Government procurement invitations, subcontracting leads, contracts awarded, sale of surplus property and foreign business opportunities published by the Department of Commerce.

Contract - (1) An agreement, enforceable by law, between two or more competent parties, to do something not prohibited by law, for a legal consideration. (2) Any type of agreement or order for the procurement of supplies and services. It includes award and preliminary notice of award; contract of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contract providing for the issuance of job orders, task orders, or task letters thereunder; letter contract, letter of intent; and purchase orders. It also includes supplemental agreements and amendments with respect to any of the foregoing.

Contract Administration - The management of all facets of assigned contracts so as to assure that the contractor's total performance is in accordance with his contractual commitments and that the obligations of the contractor and the Government are fulfilled. This management is conducted within the framework of delegated responsibility and authority and includes support of buying organizations.

Contract Award - The date of execution of the contract by both parties. The date that the contractor commences work unless authorized in advance by the Contracting Officer.

Contracting Officer - The individual who is the Government's authorized agent in dealing with the contractor. This individual has authority to negotiate and award contracts on behalf of the Government and to make changes and amendments to the contract.

Contract, Negotiated - One obtained by direct agreement with a contractor, without formal advertising for bids, but after soliciting proposals from qualified sources.

Contract Negotiator - The individual who negotiates the contract.

Contract, Research and Development - A contract for experimental, developmental, and research work.

Cost Advisory Report - Contains a review of proposed contractor's offer using techniques of price and cost analysis so that the Government pays fair and reasonable prices for the required articles and/or services.

Determination and Findings - Documents required to justify the use of authority to (1) enter into contracts by negotiation, (2) determine the kind of contract, or method of contracting to be used, (3) advance payment authorization, and (4) necessity of allowing the contractor to acquire nonseverable facilities.

Education and Other Nonprofit Organizations - Means any corporation, foundation, trust, or institution operated for scientific or educational purposes not organized for profit, no part of the net earnings of which inures to the profit of any private shareholder or individual.

Federal Procurement Regulations - Regulations which apply to all Federal agencies to the extent specified in the Federal Property and Administrative Services Act of 1949, as amended, or in other law. These regulations apply to procurements made within and outside the United States to which the Federal Government is a party.

Level of Effort - When the work statement is written in broad general terms and describes the degree of effort to be expended,

within a given pending time, a level of effort can be expressed in the contract. This is an expression of the number and type of man-hours or man-months that the Government is purchasing under the contract.

Negotiation - The term when applied to the making of purchases and contracts without formal advertising. Under negotiated contracts, the lowest offeror does not necessarily receive the award since technical proposal, price, and other factors are considered in the selection of a contractor.

Negotiation Memorandum - Sets forth all of the significant details relating to the negotiated procurement action. It reflects the history of the procurement and the rationale for the judgments supporting the negotiated agreement. It further documents the basis for the decision that a particular price is fixed and reasonable.

Phasing - The dividing of the contractual effort into areas or stages of accomplishment, each of which must be completed and approved before the contractor may proceed to the next phase.

Pre-Award Survey - Investigation of a firm at the request of a contracting activity to determine its ability to perform under a proposed contract.

Prenegotiation Conference - Meeting of negotiation team prior to negotiation with the contractor in which negotiation goals are developed.

Procurement - (1) The obtaining of material, or services by purchasing, renting, leasing, or other means from sources outside the Government. (2) In the supply management sense, it may include the functions of design, standards, determination, specification writing, selection of suppliers, financing, contract management, and other related functions.

Project Officer - The individual who is responsible for the technical direction and evaluation of the contractor's performance.

Proposals - The offeror's response to a Request for Proposal.

Proposal Evaluation Criteria - Criteria against which proposals are evaluated. Offerors must be advised of the criteria, their relative importance, and approximate weight in the Request for Proposal.

Renewal - A supplemental agreement to an existing contract for continuation of work by the incumbent contractor.

Request for Proposal - (RFP) - The Government's invitation to prospective offerors to submit a proposal based on the terms and conditions set forth in the RFP.

Respondents - Offerors who submit proposals in response to a Request for Proposal.

Sources for Solicitation - The offerors to whom the Request for Proposal will be sent.

Technical Evaluation - A measuring of a technical proposal against the technical requirements expressed in the solicitation and rating of the proposal accordingly.

Unsolicited Proposal - Is a research and development proposal which is made to the Government by a prospective contractor without prior formal or informal solicitation by representatives of the Government.

Work Statement (Scope of Work - The document which states the technical objectives and requirements of the contract.

- RESPONSIBILITIES IN THE PROCUREMENT PROCESS -

FUNCTION	RESPONSIBLE OFFICES WITHIN EPA		
	PROJECT OFFICE	CONTRACTS OFFICE	OTHER OFFICES
PRE-SOLICITATION			
Advance Planning	Develops Program Plan	Advises as to procurement method	
Submission of Purchase Request	Decision to Buy		
Obtaining Sources	Recommends & Evaluates Sources	Establishes Source List	
Sole Source Determination	Prepares Justification	Final Decision	
Request for Proposal	Develops Technical Aspects	Responsible for RFP contents and release	
SOLICITATION AND EVALUATION			
Discussions with Contractor	Advisory to contracts office	Responsible for all contacts	
Technical Evaluation	Total Responsibility		
Business Evaluation		Total Responsibility	Audit-Advisory over $100 K
Selection of Competitive Range	Advisory	Final Decision	
NEGOTATIONS AND AWARD			
Negotiations with Contractor(s)	Participant	Responsible for Conduct	
Selection of Contractor	Advisory	Final Decision	
Contract Preparation and Award	Scope of Work and Other Technical Aspects	Total Responsibility	General Counsel may be advisory
CONTRACT ADMINISTRATION			
Technical Direction	Within defined limits		
Contract Changes and Extensions	Initiates to contracts office	Total Responsibility	
Monitoring Performance	Technical Performance	Cost Performance	
Patents	Advisory to General Counsel	Coordinates Requests	General Counsel prepares Agency's position
Acceptance of Final Product	Varies with Product	Varies with Product	
Payment of Vouchers	Advisory	Reviews & Certifies	Financial Management Schedules for Payment
Property Administration	Advises and Recommends	Final Decisions	Property - Records, Disposition & other services
Administrative Close-Out		Total Responsibility	Audit & General Counsel Advisory